

## 37 Am. Jur. 2d Fraud and Deceit § 56

American Jurisprudence, Second Edition | May 2021 Update

### Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

### III. Means of Perpetration

#### C. Obtaining Goods or Services with Intent Not to Pay

#### § 56. Intention not to pay as essence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

##### West's Key Number Digest

West's Key Number Digest, Fraud  27, 28

##### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 225](#) (Instruction to jury—Fraud in securing property—Purchase with intent not to pay)

In every case in which the predication of fraud is based upon purchase or acquisition with the intent not to pay, the indispensable element to successful maintenance of the charge is the intention not to pay, and the proper inquiry is whether there was a preconceived design not to pay for the goods.<sup>1</sup> In more explicit language, to support a charge of fraud where a buyer is silent as to his or her financial condition and practices no artifice or deceit, the evidence must sustain a finding, or warrant the conclusion of law, that the buyer intended not to pay for the goods.<sup>2</sup> On the other hand, a mere inability to pay the price when due under the agreement does not constitute fraud<sup>3</sup> and so is a failure to pay the price when due.<sup>4</sup>

A relevant point of inquiry in cases involving an intent not to pay is the time when the intent not to pay must have existed in order to constitute a fraudulent device. It is generally held that the intention not to pay for goods purchased must have existed at the time the purchase was made; in other words, the only intent that renders the sale fraudulent is a positive and predetermined intention never to pay for the goods, entertained and acted upon at the time of going through the forms of an apparent sale.<sup>5</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Manly v. Ohio Shoe Co.](#), 25 F.2d 384, 59 A.L.R. 413 (C.C.A. 4th Cir. 1928); [Putterman v. Goldman](#), 197 Wis. 233,

221 N.W. 650 (1928).

<sup>2</sup> German Nat. Bank of Ripon v. Princeton State Bank, 128 Wis. 60, 107 N.W. 454 (1906).

<sup>3</sup> German Nat. Bank of Ripon v. Princeton State Bank, 128 Wis. 60, 107 N.W. 454 (1906).  
As to the effect of insolvency of the purchaser, see § 58.

<sup>4</sup> Flaherty v. Schettino, 136 Conn. 222, 70 A.2d 151 (1949).

<sup>5</sup> German Nat. Bank of Ripon v. Princeton State Bank, 128 Wis. 60, 107 N.W. 454 (1906).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.